

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Ist Appeal No.35 of 2011

Ist Appeal No.36 of 2011

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For katcha peshi

2. For hearing of CMA-854/2011

1. For orders on cross objections

2. For katcha peshi.

3. For hearing of CMA-855/2011

Date of hearing: 16.12.2016

Date of Order: 22.12.2016

Appellants: Through Mr. Arbab Ali Hakro, Advocate

Official Respondents: Through Mr. Allah Bachayo Soomro,
Additional Advocate General, Sindh

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J:-

On 04.11.2016,

arguments were heard on CMA No.854/2011 and CMA No.855/2011, filed in Ist Appeal No.35/2011 and Ist Appeal No.36/2011, respectively. However, by the order dated 23.11.2016, certain observations were made, particularly with regard to calculation of the enhanced amount of compensation in the light of impugned judgment and decree dated 31.03.2011, and therefore both these appeals were fixed on 06.12.2016 at 11:00 a.m., on which date both the learned Counsel for the parties sought a week's time to furnish such detail/estimated figures. Subsequently, a Statement dated 16.12.2016 is filed by the appellants in both these appeals, showing the amount of compensation, in terms of the impugned decision. The enhanced amount of compensation is Rs.12,77,193/- and Rs.1,25,00,991/- in Ist Appeal Nos.35 and 36 of 2011, respectively.

2. The above listed applications have been filed under Section 31 of the Land Acquisition Act (1 of 1894), seeking that the above amounts till the pendency of these appeals may be deposited in Court. According to Mr. Arbab Ali Hakro, the learned Counsel representing the appellants in both the appeals, the respondents atleast should have shown their bonafide by paying the enhanced amount of compensation as decreed by the learned Ist Additional District Judge, Badin in Land Acquisition Suit No.02/2006 and Suit No.03/2006, as envisaged under Section 31 of the Land Acquisition Act, 1 of 1894 (**The Acquisition Law**). This plea has been vehemently opposed by the learned Additional A.G (Mr. Allah Bachayo Soomro) on 04.11.2016 when a full dress hearing of the above listed applications was held. According to the official version, since the official respondents have also challenged the afore-referred judgment and decree by filing cross objections, therefore, the above listed applications merits dismissal. The other contention of the learned A.A.G was that the appellants' side by now should have filed the execution proceeding but since the same has become time-barred, therefore, through the listed applications the appellants want to achieve their objectives. The above stance of the respondents has been controverted by the appellants' Counsel. Both the learned Counsel Mr. Arbab Ali Hakro and Mr. Allah Bachayo Soomro, Additional A.G have also submitted their written synopsis dated 10.11.2016 and 08.11.2016 respectively. The appellants' Counsel has also relied upon the following case law to augment his arguments that during pendency of the appeal of the nature, the relief sought for, can be granted:-

- (i) 2010 YLR Lahore 332 (Muhammad Javaid Ghani V/s. The State)
- (ii) PLD 2001 Karachi 442 (Government of Sindh & Others V/s. Mst. Sirtaj Bibi and another)
- (iii) 2014 CLC Peshawar 1353 (Government of Khyber Pakhtunkhwa Works and Services/Communication and Works Department, Peshawar and Others V/s. Fazle Wahid Khan)
- (iv) PLD 2005 Karachi 47 (Shoukat Ali & Others V/s. Deputy District Officer (Rev) and Land Acquisition Officer, Sanghar and another)

3. Arguments of both the learned Counsel have been heard and their written synopsis are also taken into account.

4. The first judgment has been handed down by the learned Division Bench of this Court, wherein, *inter alia*, the finding of the Trial Court was set-aside, whereby it has refused to grant application under Section 31 of the Acquisition Law on the ground that amount of compensation, at that relevant time, was yet to be ascertained. Consequently, the petition of the owners of the land (in the above reported case) was allowed and directions were issued to deposit the award amount in the Trial Court. The other case of Government of Sindh V/s. Mst. Sirtaj Bibi (*supra*) is also of relevance here. The crux of the cited case law is that, while hearing the appeals under Section 54 of the Acquisition Law, the Appellate Court will have all the powers and jurisdiction conferred upon an ordinary Appellate Court, in terms of Section 107 of Civil Procedure Code, 1908. This reported decision contains an exhaustive discussion on different provisions of the above Acquisition Law including applicability of Civil Procedure Code in the appeals preferred under the Acquisition Law. Reliance was placed upon the decisions of the Hon'ble Supreme Court of Pakistan, while deciding

the above point of law. More so, the ratio of this finding is supplemented by Sections 53 and 54 of the Acquisition Law itself, which for the sake of reference are reproduced here-in-below and so also Section 31 under which the listed applications are filed:-

31. Payment of compensation or deposit of same in Court:

(1) When the Collector has made an award under section 11-

(a) if the person interested entitled to compensation under the award and [the Federal Government or the Provincial Government, as the case may be] accept the award and intimate their acceptance in writing to the Collector before the expiry of the period prescribed in sub-section (2) of section 18 for making an application to the Collector for referring the award to the Court, or in sub-section (3) of the said section for referring the award to the Court by [the Federal Government, or the Provincial Government as the case may be], whichever is later, or if the period specified in sub-section (2) of the said section for making an application to the Collector or in sub-section (3) for referring the award to the Court has expired and no such application or reference has been made, the Collector shall, before taking possession of the land, tender payment of the full amount of compensation [and costs, if any], awarded by him to the persons entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2);

(b) if the person intended entitled to compensation under the award or [the Federal Government or the Provincial Government, as the case may be] object to the award and an application has been made to the Collector under sub-section (2) of Section 18 for referring the award to the Court, or the award has

been referred to the Court by [the Federal Government or the Provincial Government, as the case may be] under sub-section (3) of that section, the Collector shall, before taking possession of the land, tender payment of the compensation [and costs, if any] awarded by him or the estimated cost of acquisition of such land as determined by the Collector of the district under sub-section (1) of section 17, whichever is less, to the persons entitled thereto under the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2):

Provided that no payment under clause (b) shall be made until the person entitled to compensation furnishes to the satisfaction of the Collector a security for refund of the amount, if any, which may subsequently be found to be in excess of the compensation [and costs, if any] awarded to him by the Court.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation [and the cost, if any] or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) *Notwithstanding anything in this section the Collector may, with the sanction of the Commissioner instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.*

(4) *Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.*

53. Code of Civil Procedure to apply to proceedings before Court: *Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 (V of 1908), shall apply to all proceedings before the Court under this Act.*

54. Appeals in proceedings before Court: *Subject to the provisions of the Code of Civil Procedure, 1908 (V of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, (V of 1908 in Order XLV thereof)* **(Underlining to add emphasis).**

5. Without touching upon the merits of the case, it is an admitted fact that instant appeals are of year 2011 and if the above mentioned amounts are deposited in Court and such amount is invested by the Court in a profit bearing scheme, it will not cause any prejudice to either parties. Section 32 of the Acquisition Law provides a mechanism,

even for the situation where it transpires that land was unauthorizedly alienated by a person, then such deposited amount under an Award in terms of Section 31 can be invested in the prescribed manner. Section 33 also supplements Section 32 and 31 of the Acquisition Law. In view of the above discussion, it would be proper to grant the above listed applications to the extent that respondents are directed to deposit the above amounts of Rs.12,77,193/- (Rupees Twelve Lac Seventy Seven Thousand One Hundred Ninety Three) and Rs.1,25,00,991/-(Rupees One Crore Twenty Five Lac Nine Hundred Ninety One) in this Court within a fortnight from the date of this order and the learned Additional Registrar will invest the same in some approved profit bearing scheme and the amount so deposited together with accruals will be paid either to the successful party in the present proceeding or as the Court may so direct, keeping in view the attending circumstances at that relevant time. Consequently, both the Civil Miscellaneous Applications being No.854/2011 and 855/2011 stands disposed of.

JUDGE

Shahid

